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EXAMINER	
KRUTER, J	
ART UNIT	**PAPER NUMBER**
336	7

DATE MAILED: 05/18/88

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 2/25/88 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449
4. ☐ Notice of informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 9-22, 27-34, 37-57 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☒ Claims 9-20, 27-33, 44-57 are allowed.

4. ☒ Claims 21, 22, 34, 37, 38, 42, 43 are rejected.

5. ☒ Claims 39-41 are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).

10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

In view of a telephone conversation with Mr. Douglas N. Larson on 4/21/88 claim 40 has been located in paper #7 of the parent case and the numbering of the claims by the applicant is now considered to be in order.

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 21 and 22 are rejected under 35 U.S.C. 103 as being unpatentable over Banko ('342).

Banko in Figure 2 shows a fluid control apparatus for treating the eye with an aspiration conduit and an irrigation fluid conduit. The eye is considered to be an "elastic chamber". We are further shown a controllable pump means that consists of a compressible conduit within the housing of the peristaltic pump together with rotor 126. The pressure sensing

transducer means 60 communicates with the aspiration conduit means and further electrically communicates with the control circuit.

The attention of applicant is called to col. 4 lines 9-27. It should be noted that when a blockage occurs a decrease in flow will occur and measured by the transducer which will provide a change in voltage. This change in flow rate is gradual since the flow rate decreases gradually as the fluid in 70 empties. As the fluid empties the vacuum level increases since the pump is still running, thus the control signal is considered to be proportional to the vacuum level when the line 70 is still emptying.

Claim 34 is rejected under 35 U.S.C. 103 as being unpatentable over Kelman in view of Douvas.

Kelman shows everything that applicant claims except that instead of utilizing a liquid equaling pressure means in the irrigation line it uses atmospheric pressure and the hydraulic pressure in the aspiration line.

In Douvas we are shown the use of liquid such as 36 which is tied into the aspiration line 26 which will inherently equalize the pressure in the aspiration line when the blockage is overcome. Thus it can be seen that Douvas teaches the missing element in Kelman to equalize the pressure in the aspiration conduit.

Therefore it would have been obvious at the time of the invention to incorporate the use of a liquid as in Douvas to balance or equalize in place of air and liquid utilized by Kelman.

Claims 37, 38, 42 and 43 are rejected under 35 U.S.C. 103 as being unpatentable over Kelman in view of Douvas as applied to claim 34 above, and further in view of Banko ('342).

Banko shows a liquid pressure equalizing means 55, with a pressure equalizing circuit 58 which provides communication to the irrigation fluid to the aspiration fluid line within the handpiece.

It would have been obvious at the time of the invention by a person of ordinary skill in the art to substitute the closed liquid type pressure equalizing circuit for the air vent equalizing circuit in order to inhibit the possibility of outside bacteria from entering the liquid circuit.

In claim 38, note the valve 65 which controls the flow of fluid from 55 to the hand tool.

With respect to claims 42 and 43, applicant's attention is drawn to column 3 line 28 of Banko. It would have been obvious at the time of the invention to utilize either a bottle or a bag as a containing source of irrigant to flush the eye as in Douvas, Kelman or Banko.

Claims 39, 40, 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9-20, 27-33, 44-57 are allowable over the prior art of record.

Applicant's arguments filed Fib. 25, 1988 have been fully considered but they are not deemed to be persuasive.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP 706.07(a).

Applicant is reminded of the extension of time policy set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE **THREE MONTHS** FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to J.L. Kruter at telephone number 703-557-3125.

John D. Yasko
Examiner
Art Unit 336

J.K Kruter:lf

5-9-88